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NELSON MULLINS RILEY & SCARBOROUGH, LLP
1320 MAIN STREET, 17TH FLOOR
COLUMBIA, SC 29201

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH J. TAGGART, SR. and PAUL S. STEINWEG

Appeal 2008-005867
Application 10/800,843
Technology Center 3700

Decided: September 15, 2009

Before LINDA E. HORNER, STEVEN D.A. MCCARTHY, and MICHAEL W. O'NEILL, *Administrative Patent Judges.*

O'NEILL, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Paul S. Steinweg et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-16. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

THE INVENTION

The claimed invention is to a tool for removing serpentine belts.

Claim 1, reproduced below, is representative of the subject matter on appeal.

> A serpentine belt tool for removal and installation of a serpentine belt in a vehicle comprising:
>
> a. a drive bar having a handle at a first end and a fitting at an opposite second end, *wherein said fitting is disposed at a fixed angle relative to said drive bar*;
>
> b. a double box end wrench having a first end defining a polygonally shaped opening that is sized and shaped to receive said drive bar fitting, and an opposite second end defining a ratcheting wrench having a first plurality of teeth on an inner circumference thereof; and
>
> c. a socket having a first end defining a second plurality of teeth on an outer circumference thereof, said socket second plurality of teeth being adapted to be received by said ratcheting wrench first plurality of teeth, and an opposite second end defining one of a polygonally shaped opening and a polygonally shaped tang adapted to be received by a work piece of a vehicle idler pulley, wherein said drive bar handle is moveable between a first direction that applies torque to the idler pulley work piece, and a second direction that causes said drive bar handle to move relative to said socket.

Claim Appendix, emphasis added.

THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Brame	US 2,691,316	Oct. 12, 1954
Carrigan	US 4,337,860	Jul. 6, 1982
Bennett	US 5,368,164	Nov. 29, 1994
Stepp	US 6,367,356 B1	Apr. 9, 2002

Tuan-Mu US 2004/0035257 A1 Feb. 26, 2004

THE REJECTIONS

The following Examiner's rejections are before us for review:

Claims 1, 4, 5, 7, 8, 9, 12, 13, 15 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brame, Tuan-Mu, and Stepp.

Claims 2, 6, 10 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brame, Tuan-Mu, Stepp, and Carrigan.

Claims 3 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brame, Tuan-Mu, Stepp, and Bennett.

SUMMARY OF DECISION

We REVERSE.

ISSUE

Have the Appellants shown that the Examiner failed to articulate reasoning with some rational underpinning sufficient to support the conclusion that one of ordinary skill in the art would substitute the fixed fitting taught in Stepp for the pivotal fitting disclosed in Brame?

FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Independent claims 1, 4, 9, and 12 each recite a drive bar having a fitting fixed at an angle relative to the drive bar.
2. Brame discloses the drive bar (extension handle 11) has a pivoted end 10. Col. 2, ll. 24-25.
3. Brame discloses an advantage of his wrench is to provide maximum adaptability for uses in confined places because of its short length. Col. 3, ll. 72-74.
4. The Examiner found that Stepp teaches "a drive bar '10' having a handle '12, 14' at one end and a fixed fitting '18' at an opposite end. Stepp indicates that the fitting may be fixed or angularly moveable (col. 3, lines 49-52)." Ans. 4.
5. Stepp teaches in column 3, lines 49-52 that "[w]rench head 16 may be solid or may be provided with a ratchet mechanism, either configuration of which is well known in the art. Ratchet mechanisms are also well known in the art, and may be fixed in one turning direction or may ...."
6. The Examiner concluded that "[i]t would have been obvious to one having ordinary skill in the art to form the fitting '10' of Brame as fixed to provide a simple, strong and durable driver as taught by Stepp." Ans. 4.
7. Stepp teaches that prior art tool drivers suffer from the need to add additional adapters in order to accommodate different sizes of socket wrenches. The additional adapters inevitably add extra length making the wrench difficult to maneuver in tight spaces or properly manipulate the wrench in order to apply the proper torque to the workpiece. Col. 1, ll. 28-30 and col. 2, ll. 22-29.

8. Therefore, Stepp teaches a tool driver that is simple, strong, and durable as compared to the prior art complexity in tool drivers that required either multiple adapters or sliding or telescoping arrangements for exposing different sized drivers in a single tool. *See* Col. 2, ll. 35-49 and ll. 53-54.
9. Stepp's tool driver 18 consists of adjacent drives 20 and 22 that are separated by shoulder 28. Preferably, the drives 20 and 22 are integral. Preferably, the shoulder 28 is shaped to permit a socket or tool bit, engaged by drive 22, to firmly set on drive 20. Col. 4, ll. 42-56.

PRINCIPLES OF LAW

In order to establish a prima facie case that a clam is obvious based on teachings of prior art references, the Examiner must articulate some "reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir 2006). The Examiner's reasoning can have no rational underpinning where the proposed modification would render the primary reference being modified unsatisfactory for its intended purpose. *See Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999) (Where the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, the proposed modification would not have been obvious).

ANALYSIS

Appellants have identified error in the Examiner's conclusion of obviousness based on the scope and content of the prior art and the underpinning as to the reason to modify Brame to have a fixed fitting in lieu of its pivotal fitting. *See* App. Br. 10-13.

Each independent claim recites the drive bar has a fitting fixed at an angle relative to the drive bar. Fact 1. Brame's drive bar pivots, Fact 2, to assist in allowing the wrench to achieve its advantage of reaching into confined spaces. Fact 3. To modify Brame's drive bar with the teachings of Stepp would make Brame's wrench unsatisfactory for its intended purpose of reaching into tight spaces because the drive bar could not be pivoted to an appropriate angle. Further, the Examiner mischaracterizes the scope and content of Stepp in finding that Stepp teaches that the tool driver 18 is either fixed or angularly moveable. Fact 4. Stepp in that portion of his disclosure is describing that the wrench end can be solid or a ratcheting mechanism, such as found on a socket wrench. Fact 5. The Examiner's conclusion, Fact 6, that a person of ordinary skill in the art would modify Brame based on the objectives taught in Stepp takes those advantages out of context. Stepp's objective of providing a simple, strong, and durable tool driver is with respect to the prior art tool drivers requiring extra adapters or complex mechanisms to accommodate different size sockets, both of which cause such tools to either inhibit the tool to be manipulated in tight spaces or to apply a proper amount of torque to the workpiece. Facts 7 and 8. To reach the objective taught in Stepp's disclosure, the tool driver is an integral piece separated by a shoulder that permits a firm seat for a socket or tool bit. Fact 9.

The Examiner has not used Tuan-Mu, Carrigan, or Bennett to cure the above described deficiency of Brame and Stepp.

CONCLUSION

In view of the foregoing, Appellants have shown that the Examiner failed to articulate reasoning with some rational underpinning sufficient to support the conclusion that one of ordinary skill in the art would substitute the fixed fitting taught in Stepp for the pivotal fitting disclosed in Brame.

DECISION

The Examiner's decision to reject claims 1-16 is reversed.

REVERSED

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NELSON MULLINS RILEY & SCARBOROUGH, LLP
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COLUMBIA, SC 29201